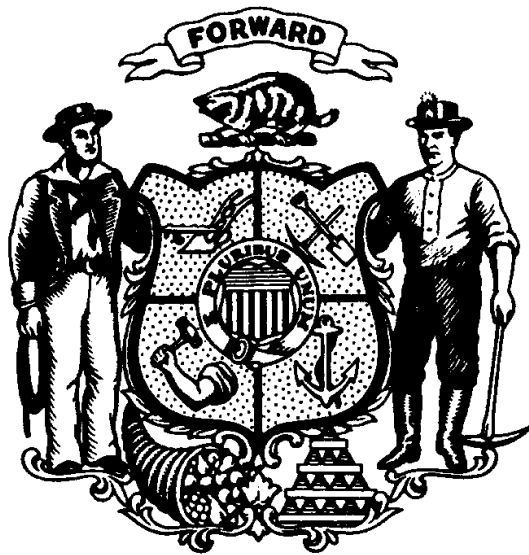


WISCONSIN ADMINISTRATIVE REGISTER

No. 499



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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

(Fee Schedule, Ch. Comm 2)

(Credentials, Ch. Comm 5)

(Elevators, Ch. Comm 18)

Rules adopted revising **chs. Comm 2, 5 and 18**, relating to inspection of elevators and mechanical lifting devices.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Department inspects elevators and mechanical lifting devices to ensure these units are installed and operating in accordance with the elevator safety rules. The Department is required to inspect both new and existing elevator installations. Due to the increased number of elevators and mechanical lifting devices installed in new construction, the Department has not been able to keep up with all of its required inspections. To ensure that the citizens of Wisconsin are safe when using elevators and other mechanical lifting devices, the Department must increase the number of people performing these safety inspections.

The Department rules relating to fees, certification, and inspection procedures are being modified to permit additional individuals to perform inspections of elevators and other mechanical lifting devices. The Department proposes to fund additional inspections by amending its fees to match Department

expenses. Plan review and certificate of operation fees would be lowered. Inspection fees would be raised.

Publication Date: May 4, 1997

Effective Date: June 1, 1997

Expiration Date: October 30, 1997

Hearing Date: July 29, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Department of Corrections

1. Rules adopted creating **ch. DOC 304**, relating to inmate secure work groups.

Finding of Emergency

The Department of Corrections finds an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Effective June 1, 1997, appropriations will be made available to the Department of Corrections for the establishment of secure work groups. Section 303.063 (2), Stats. requires that if the Department establishes a secure work program, the Department shall, before implementing the program, promulgate rules specifying the procedures and regulations relating to the program. The Department has just begun the permanent rule process for establishing the administrative rules for the secure work program. It typically takes nine months for a permanent administrative rule to be promulgated from the time the permanent rule making process begins.

The Department needs to adopt administrative rules regarding the organization and operation of the secure work group program in order to have rules in place which will comply with Sec. 303.063 (2), Stats. The rules will provide for the protection of the public, the correctional officers and the inmates by providing the requirements for participation in the program as well as providing for safety and security concerns.

An emergency currently exists as the prison population is idle and needs secure work groups to provide inmates work opportunities, to prepare inmates for work opportunities upon release to the community, and to reintegrate inmates into the community.

Publication Date: May 30, 1997

Effective Date: May 30, 1997

Expiration Date: October 28, 1997

2. Rules adopted creating **ch. DOC 332**, relating to registration and community notification of sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The legislature has directed the department to implement programs for sex offender registration and community notification by June 1, 1997. Emergency rules are necessary to implement the June 1, 1997, timeline mandated by the legislature, inform sex offenders of registration procedures, and inform law enforcement,

victims and the public of the right to access information under the procedures designed by the department. Emergency rules are necessary to implement the June 1, 1997, timeline established by the legislature while permanent rules are developed and promulgated.

Publication Date: June 1, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997

EMERGENCY RULES NOW IN EFFECT

Health & Family Services

(Management, Policy and Budget, Chs. HSS 1—)

Rules adopted revising **ch. HSS 1**, relating to parental liability for the cost of care for children in court-ordered substitute care.

Exemption From Finding of Emergency

The Legislature in s. 9126 (2z) of 1993 Wis. Act 481 directed the Department to promulgate rules required under s. 46.25 (9) (b), Stats., by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

Analysis

Section 46.10 (14) (b), Stats., as created by 1993 Wis. Act 481, requires that parental support for court-ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.34, 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Wis. Act 481, directs the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court-ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court-ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court-ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

Publication Date: January 22, 1997
Effective Date: January 22, 1997
Expiration Date: June 21, 1997
Hearing Date: April 8, 1997
Extension Through: August, 19, 1997

EMERGENCY RULES NOW IN EFFECT

Health and Family Services

(Health, Chs. HSS 110—)

Rules adopted revising **ch. HSS 163**, relating to certification for lead abatement work and lead management activities.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage, and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, and the brain in particular, and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to have birth defects, mental retardation or behavioral disorders, or to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards in order to determine the appropriate method of hazard reduction or abatement, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate lead inspection or assessment results. A reliable lead inspection or assessment is necessary to ensure a lead-safe environment for building occupants, especially children under the age of six, who are the most vulnerable population affected by lead-based paint and lead-contaminated dust and soil.

Under s. 254.176, Stats., the Department may establish training and certification requirements for any person who performs or supervises lead hazard reduction or lead management. In addition, s. 254.178, Stats., states that no person may advertise or conduct a training course in lead hazard reduction or lead management that is represented as qualifying persons for state certification unless the course is accredited by the Department.

In 1993, the Department created ch. HSS 163, Wis. Adm. Code, Certification for Lead Abatement and Other Lead Hazard Reduction, to regulate the training and certification of lead abatement workers and supervisors and to accredit the corresponding training courses. Rules were needed to meet eligibility requirements for a \$6 million federal Department of Housing and Urban Development (HUD) grant to fund lead hazard reduction in low and moderate income housing where children under the age of six are found to have elevated blood lead levels.

Development of rules for training and certifying lead management professionals, including lead inspectors, risk assessors, and project designers, and for accrediting the corresponding courses, was postponed pending publication of U.S. Environmental Protection Agency (EPA) lead training and certification regulations. Initially expected in June 1994, these EPA regulations were not published until August 29, 1996.

Since most lead management work to date has been associated with elevated blood lead level investigations conducted by state and local government employees who received appropriate training from EPA regional lead training centers, the delay in lead management rules was not a health hazard. The creation of the private inspection and risk assessment service market resulting from new federal HUD/EPA disclosure regulations, however, poses a health hazard if that market is not properly regulated.

Joint HUD/EPA regulations (24 CFR Part 35 and 40 CFR Part 745) now require that landlords and home sellers disclose the known presence of lead in rental units and homes being sold. These regulations took effect September 6, 1996, for owners of more than four dwelling units and December 6, 1996, for owners of four or fewer dwelling units. In addition, a home buyer is allowed 10 days to obtain a lead inspection or risk assessment before final obligation to purchase a home under a signed offer to purchase.

Due to the lack of state-accredited training courses and state-certified lead management professionals to fill the demand,

lead management services are being offered by persons who may not possess appropriate education, experience or training. Unqualified lead inspectors and risk assessors can have an adverse effect on the state's residential marketplace. Based on an inaccurate inspection, a mortgage company could deny a mortgage loan, a home sale could fall through, or a property owner could expend large sums of money for unnecessary lead abatement actions. Even worse, the health of children may be jeopardized by erroneous findings that a lead hazard is not present, which can result in improper handling of lead-based paint materials.

HUD recently announced it was awarding the State of Wisconsin and the City of Milwaukee additional lead hazard reduction grants totaling over \$6.5 million. The grants require that money be disbursed only for lead-based paint activities performed by state-certified persons who have completed state-accredited lead training courses. Since Wisconsin does not yet certify lead inspectors, risk assessors, or project designers, grant mandates cannot be fully met, which could lead to funding difficulties and delay vital abatement activities.

This emergency order amends ch. HSS 163 to require accreditation of lead inspector, risk assessor and project designer training courses and, beginning April 19, 1997, certification of lead inspectors, risk assessors and project designers. In addition, references to "lead abatement or HUD-funded lead hazard reduction" have been changed to add lead management services. The order also adds accreditation and certification fees.

These rule changes are being published by emergency order to ensure, through Department certification and accreditation, that persons providing lead management services, including lead inspections, risk assessments and project design, are appropriately trained and qualified.

Publishing these rules as emergency rules also enables the State of Wisconsin and the City of Milwaukee to implement the federal grants which require that only trained and certified lead professionals perform lead hazard evaluations and lead hazard reduction and abatement.

Publication Date: February 18, 1997
Effective Date: February 18, 1997
Expiration Date: July 18, 1997
Hearing Date: March 18, 1997

EMERGENCY RULES NOW IN EFFECT (4)

Commissioner of Insurance

1. A rule adopted creating **s. Ins 3.46 (18)**, relating to the requirements for tax deductible long term care insurance.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The recently passed federal "Kassebaum-Kennedy" law, P.L. 104-191, set certain standards for allowing favorable tax treatment of long term care insurance policies. The existing Wisconsin administrative rules pertaining to long term care do not meet these criteria and require changes. These changes will allow tax deductible long term care insurance policies to be sold to Wisconsin residents as soon as possible.

Publication Date: December 20, 1996
Effective Date: January 1, 1997
Expiration Date: May 31, 1997
Hearing Date: February 19, 1997
Extension Through: July 29, 1997

2. Rule was adopted revising **s. Ins 18.07 (5) (bg)**, relating to an increase in 1997-98 premium rates for the health insurance risk-sharing plan.

Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e) Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

Analysis Prepared by the Commissioner of Insurance

1996-97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan ("HIRSP") board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP's operating and administrative costs. This rule adjusts the premium rates for the period of July 1, 1997 to June 30, 1998 for persons entitled to a premium reduction under s. Ins 18.07 (5) (bg). The reduced premium rates are calculated by applying the percentages mandated by s. 619.165 (1) (b), Wis. Stats., to the rate that a standard risk would be charged under an individual policy providing substantially the same coverage and deductibles as provided under the plan. This adjustment represents an average 5.8% increase in premium payments over the most recent rates.

Publication Date: May 16, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: June 30, 1997

3. A rule was adopted repealing **s. Ins 3.46 (18) (d)**, relating to the requirements for tax deductible long term care insurance policies.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes would repeal the current requirement in the existing emergency rule which requires the offer of a non-tax qualified plan in each solicitation of a tax-qualified plan. After the public hearing on the permanent rule, it was determined that this requirement is no longer needed. The permanent rule was submitted to the legislature on May 30, 1997 with this provision deleted. This procedure to modify the emergency rule was presented to JCRAR at the hearing to extend the time period the emergency rule is effective.

Publication Date: June 13, 1997
Effective Date: June 13, 1997
Expiration Date: July 29, 1997

4. Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees calculation of adding certain physician specialties and UW hospital and clinics residents' fees.

Finding of Emergency

The deputy commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The deputy commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 97-71, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1997. The permanent rule was

delayed pending legislative action on Senate Bill 145 which, if passed, will require a lowering of the fund fees originally proposed by the fund's board of governors. Senate Bill 145 may still reach the Senate floor this legislative session but, in all likelihood not before July 1, 1997, when this fee rule must be in effect. Assembly Bill 248, the Assembly bill which mirrors Senate Bill 145, passed the Assembly overwhelmingly.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 15, 1997. Because the provisions of this rule first apply on July 1, 1997, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to the published notice was held on May 30, 1997.

Publication Date: June 20, 1997
Effective Date: June 20, 1997
Expiration Date: November 18, 1997

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Rule adopted creating **s. NR 27.07**, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

Publication Date: November 18, 1996
Effective Date: November 18, 1996
Expiration Date: See section 12m, 1996 Wis. Act 296
Hearing Date: January 14, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Public Instruction

1. Rules adopted revising **ch. PI 35**, relating to the Milwaukee private school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the

public welfare. A statement of the facts constituting the emergency is:

In his ruling, effective August 15, 1996, Judge Higginbotham prohibited the expansion of the Milwaukee private school choice program to religious private schools provided for under 1995 Wis. Act 27. On January 15, 1997, Judge Higginbotham determined that all other stipulations under the Act are allowed to continue until June 1997. At that time all of the provisions under the Act are suspended and the program reverts to previous statutory language.

Since the provisions under the Act (except for the participation of religious schools) are to be implemented for the remainder of the 1996-97 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Since the private school choice program has yet to be reviewed by the Court of Appeals and possibly the Supreme Court, only emergency rules will be promulgated at this time in order to implement the provisions under the Act through the end of the 1996-97 school year. Permanent rules will be developed when judicial review is finalized.

Publication Date: February 19, 1997
Effective Date: February 19, 1997
Expiration Date: July 19, 1997
Hearing Date: April 1, 1997

2. Rules adopted revising **chs. PI 3** and **4**, relating to teacher certification requirements and certification program requirements.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare.

Proposed permanent rules were submitted to the Wisconsin Legislative Council on May 27, 1997. Most of the modifications made under the proposed permanent and emergency rules clarify, eliminate redundancy, and streamline current requirements to make the provisions under ch. PI 3 and 4 easier to read, understand, and implement. The rules also provide for consistency with other state agency licensure activity.

In order for teachers to apply for or renew specified licenses (license are issued July 1 through June 30) and for universities to have program requirements in place in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: July 1, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Department of Revenue

1. Rules were adopted amending **s. Tax 11.05 (2)(s)** and revising **s. 11.86 (6)**, relating to sales and use tax treatment of landscaping services.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Sections Tax 11.05 (2)(s) and 11.86 (6), Stats., state that landscaping services (e.g., planting, mowing, and fertilizing grass)

are only taxable when they are performed in developed areas. Similar services performed in undeveloped areas (e.g., along highways) were determined by the department to not be landscaping services and therefore, the sale of such services was not subject to sales or use tax.

In case of the *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket#93-S-569), the Wisconsin Tax Appeals Commission held that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were landscaping while the same services performed in undeveloped areas were not landscaping.

It necessary to promulgate this rule order to remove any threat of estoppel arguments and revenue loss to the state as a result of information contained in these rules that implies planting, mowing, fertilizing, and similar services performed in undeveloped areas are not taxable.

Publication Date: May 18, 1997
Effective Date: May 18, 1997
Expiration Date: October 16, 1997
Hearing Date: July 29, 1997

- Rules adopted repealing **ch. ATCP 53** and creating **ch. Tax 53**, relating to increasing plat preview fees to cover all of the current costs of activities and services provided by the department under ss. 70.27 and 236.12, Stats.

Finding of Emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

For the past three years, program costs have out paced revenues received. The Plat Review section has relied on their substantial cash balance to cover the difference. Projections indicate that cash reserves will be depleted within the next year or earlier. Without a plat review fee increase significant cutbacks in service to customers, the public, other state agency programs, and local units of government will be necessary. With such cut-backs state certified plats with saleable but not buildable lots could result. It should be noted that this program has not had a rate increase since 1985.

In order to address this problem, an administrative rule is in the process of being promulgated. Due to the complexities of where the Plat Review section physically resides (DATCP), who has program responsibility for it, combined with the 1996 Memorandum of Understanding between the Department of Revenue and the Department of Commerce, the administrative rule process has taken longer than anticipated and it is expected that the rule will not be completed for another 90 days.

In order to ensure that funding will be sufficient and that services to the citizens of this state remain uninterrupted, an emergency rule is necessary. In particular, this rule addresses the following needs:

- Ch. ATCP 53 is repealed.

- Ch. Tax 53 is created. Under this rule certain fees charged for plat review are increased.

Publication Date: June 1, 1997
Effective Date: June 1, 1997
Expiration Date: October 30, 1997
Hearing Date: July 11, 1997

EMERGENCY RULES NOW IN EFFECT

Department of Transportation

Rules adopted revising **ch. Trans 300**, relating to school buses.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. The amendments are needed to assure that school bus operators can purchase school buses manufactured using the latest in construction technology and providing equal strength and safety. Currently, there are estimated to be 60 buses on order by operators. Without this emergency rule, these buses could not be used in Wisconsin when the school year begins in August 1997. Therefore, schools will start using alternative vehicles (production vans) because of the unavailability of the smaller school buses built to the safer school bus standards.

Publication Date: July 1, 1997
Effective Date: July 1, 1997
Expiration Date: November 29, 1997
Hearing Date: August 26, 1997

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rule adopted creating **s. VA 2.01 (2)(b)18.**, relating to the health care aid grant program.

Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2)(b)2., Wis. Adm. Code, the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap.

The treatment plans typically encompass the removal of teeth with a resulting need for dentures. Failure to promptly provide denture could have a negative impact upon an individual's health. It is therefore necessary to assure that the Department has sufficient authority to pay for the dentures included in treatment plans already received during this fiscal year. The emergency rule cap will accomplish this goal.

Publication Date: April 7, 1997
Effective Date: April 7, 1997
Expiration Date: September 5, 1997
Hearing Date: April 18, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development

(Economic Support, Chs. DWD 11-59)

- Rules adopted renumbering **subch. VII of ch. HSS 55** and creating **s. DWD 56.08**, relating to the administration of child care funds and required parent copayments.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Governor has directed the Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin Works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. The Governor has approved a new schedule for child care copayments and this rule places the new schedule into operation. The use of an emergency rule allows the implementation of the new schedule immediately.

Publication Date: December 30, 1996

Effective Date: December 30, 1996

Expiration Date: May 29, 1997

Extension Through: July 27, 1997

- Rules were adopted creating **ch. DWD 12**, relating to Wisconsin Works program.

Exemption From Finding of Emergency

The Legislature in s.275(3) of 1995 Wis. Act 289 permitted the Department to promulgate the rules required under ss. 49.143 to 49.157, Stats., as created by Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency.

Analysis Prepared by the Department of Workforce Development

Wisconsin Works (W-2), the replacement program for the Aid to Families with Dependent Children (AFDC) program, is based squarely on work. Rather than offering welfare checks to those who do not work, as AFDC does currently, W-2 offers participants the opportunity to move into the work world and become self-sufficient through employment.

These rules provide the administrative framework under which the Department will implement a W-2 pilot program in two counties, Fond du Lac and Pierce, effective March 1, 1997. As the pilot counties for the Work Not Welfare program which began January 1, 1995, these two counties have had experience in implementing major welfare reform efforts. The W-2 program includes work opportunities, job access loans, education and training activities to enhance employability, intensive case management, child care and child support enforcement and other employment supports such as transportation assistance and access to health care services under the Medical Assistance program.

Wisconsin Works (W-2) was authorized through enactment of 1995 Wis. Act 289 which Governor Thompson signed into law on April 25, 1996. Under s.49.141(2)(b), Stats., if a federal waiver is granted or federal legislation is enacted, the Department of Workforce Development could begin to implement W-2 no sooner than July 1, 1996 and must fully implement the W-2 program statewide in September 1997. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which ends the entitlement program under Title IV-A of the Social Security Act and creates a block grant program under which states receive monies to provide cash and other benefits to help needy families support their children while at the same time requiring families to participate in work program activities which will help them become self-sufficient. In general, a state may not use any part of the TANF grant to provide assistance to a family for more than 60 months.

States must ensure, under section 114 of P.L. 104-193, that families who meet the AFDC eligibility requirements in effect on

July 16, 1996, have access to Medical Assistance. Wisconsin has not yet obtained the necessary waivers or federal legislation that would allow the implementation of the W-2 health plan. Therefore, W-2 participants who meet the July 16, 1996, AFDC eligibility requirements or are eligible under s.49.46 or 49.47, Stats., and the implementing administrative rules, Chs. HFS 101-108, administered by the Department of Health and Family Services, may apply and be determined eligible for Medical Assistance.

Under W-2, there will be a place for everyone who is willing to work to their ability. The program is available to parents with minor children, low assets and low income who need assistance in becoming self-sufficient through employment. The W-2 program provides cash benefits only for those individuals who participate in W-2 employment and training activities. W-2 agencies have the option, for participants in a community service job or a transitional placement, to aggregate education and training hours for approved programs to allow an individual to participate in education and training activities for more than 10 or 12 hours per week within the first few months of participation. Each eligible W-2 applicant will meet with a Financial and Employment Planner (FEP) who will help the individual develop a self-sufficiency plan and determine their place on the W-2 employment ladder. The ladder consists of four levels of employment options, in order of preference: unsubsidized employment; subsidized employment through a trial job for those participants who need minimal assistance but where unsubsidized employment is not available; a community service job for those participants who need to practice work habits and skills necessary to move into unsubsidized employment; and transitional placement for those unable to perform independent, self-sustaining work. Individuals placed in a trial job will receive wages from an employer. Individuals placed in a community service job will receive a monthly benefit of \$555 and individuals placed in a transitional placement will receive a monthly benefit of \$518. W-2 participants are limited to 24 months in a single subsidized employment position category. Extensions may be granted on a limited basis when local labor market conditions preclude opportunities or when the participant has significant barriers which prevent him or her from obtaining unsubsidized employment. Child care is available for those individuals who have children under the age of 13 and need child care in order to work or participate in a W-2 employment position. The W-2 program will be administered by contracted agencies which may include counties, tribal agencies and private agencies in geographic areas determined by the Department.

These are the rules for implementation of the Wisconsin Works program. The rules include eligibility requirements for those individuals applying for a W-2 employment position or child care, time-limited benefits for participants in W-2 employment positions, good cause for failure or refusal to participate in W-2 employment positions or other required employment and training activities, how sanctions are applied for failure to meet the W-2 employment position participation requirements, and school attendance requirements under the Learnfare program for the children of W-2 employment position participants.

Publication Date: March 1, 1997

Effective Date: March 1, 1997

Expiration Date: July 29, 1997

Hearing Dates: May 21 & 28, 1997

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Labor Standards, Chs. DWD 270-279)

Rules were adopted revising **ch. DWD 272**, relating to the minimum wage.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

In addition to raising the minimum wage to \$4.75 per hour on October 1, 1996, and \$5.15 per hour on September 1, 1997, the federal Fair Labor Standards Act provides for an "opportunity wage" of \$4.25 per hour which may be paid by each new employer to a person under the age of 20 during the first 90 days of employment. The Department's permanent rules to raise the state minimum wage contained provisions creating an opportunity wage that are the same as those of the federal law.

On April 10, 1997, the State Senate Committee on Labor, Transportation and Financial Institutions suspended the portions of CR 96-181 relating to the opportunity wage. The Department proceeded with formal adoption of the provisions of the rule that were not suspended; the permanent rule changes will become effective on June 1, 1997. On April 17, 1997, the Joint Committee for Review of Administrative Rules (JCRAR) unanimously approved extension of the Department's emergency rule on minimum wage, which includes the provisions on the opportunity wage. The emergency rule extension lasts until June 27, 1997.

The respective votes of the two Legislative committees have caused uncertainty as to whether the provisions relating to the opportunity wage remain in effect through June 27, 1997, or expire on June 1, 1997. The JCRAR has met several times since the standing committee's suspension but its only action on this issue was to extend the emergency rule, which includes the opportunity wage provision. The legal interpretation from the Legislative Council as to the precedence of the emergency rule provision vs. the permanent rule provision has not been definitive.

It appears that the JCRAR will vote in June on the standing committee suspension of the opportunity wage provisions of the permanent rule. If the JCRAR does not concur in the standing committee's suspension, the Department will proceed to promulgate the opportunity wage provisions on a permanent basis. However, due to timelines required for promulgation of permanent rules, this provision would not likely take effect permanently until September 1, 1997. Thus, the delays in action coupled with interpretive uncertainty could result in a regulatory gap that would cause confusion amongst the state's employees and employers over the provisions in effect after June 1, 1997. The Department believes that such uncertainty throughout the state would be undesirable.

In absence of definitive legal opinion or action on the opportunity wage issue by the JCRAR, this emergency rule alleviates uncertainty as to whether the opportunity wage provisions are effective after June 1 by explicitly maintaining their effect. The Department will make every reasonable effort to comply with the JCRAR's intent once action is taken. If the JCRAR affirms the standing committee's suspension, the Department will immediately withdraw the provisions of this emergency rule. If the JCRAR does not affirm the standing committee's suspension, this emergency rule will prevent a gap in coverage of the opportunity wage between the date of JCRAR action in June and the effective date of permanent provisions on the opportunity wage.

This emergency rule also contains a provision that prohibits the displacement of an employee that occurs solely for the purpose of

hiring an opportunity employee. This language is similar to a provision of the federal law and was included by the Department because the Senate Committee on Labor, Transportation and Financial Institutions asked that the state rule also contain this provision. This language was originally submitted to the Senate Labor, Transportation and Financial Institutions Committee as a germane modification to CR-96-181 on March 31, 1997. It was the Department's intent to promulgate this provision as part of the permanent rule. However, this provision was inadvertently omitted from the final draft.

Publication Date: May 31, 1997
Effective Date: May 31, 1997
Expiration Date: October 29, 1997
Hearing Date: August 12, 1997
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Wage Rates, Chs. ILHR 290-294)

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

On December 11, 1996, this Department adopted an emergency rule and began permanent rulemaking to amend the former ch. ILHR 290, Wis. Adm. Code, in accordance with 1995 Act 215, which enacted changes in the laws governing the determination of prevailing wage rates for state and local public works projects. Among the provisions of that emergency rule was a section on the classification of subjourneypersons.

The initial emergency rule will expire on May 10, 1997. The Department has developed a different provision on subjourneypersons which it is submitting for legislative committee review as a part of the permanent rule in its proposed final draft stage. In the meantime, it is necessary to have a formal policy on subjourneypersons in effect so that the Department may continue to issue wage determinations on state and local public works projects without causing the projects to be delayed. Therefore, the Department is adopting the new subjourneyperson policy, and related procedural provisions, as an emergency rule.

Publication Date: May 10, 1997
Effective Date: May 10, 1997
Expiration Date: October 8, 1997
Hearing Date: June 19, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Natural Resources

Subject:

Chapter NR 25 – Commercial fishing – outlying waters.

Description of policy issues:

Description of policy issues to be resolved, including groups likely to be impacted or interested in the issue:

This rule addresses minimum catch requirements for the renewal of annual Lake Michigan commercial fishing licenses. Minimum catch requirements help identify inactive licenses. With the closure of commercial fishing for yellow perch in Lake Michigan and the reduction in the yellow perch annual harvest limit for Green Bay, some commercial fishers have asked the Department to review the current requirements. In addition, increases in the annual harvest limits for whitefish and chubs have occurred since the current requirements were adopted.

This rule will:

- 1) Retain meaningful criteria for the identification of inactive licenses while
- 2) Allowing flexibility in response to temporary fluctuations in fish abundance.

Explain the facts that necessitate the proposed change:

The closure of the Lake Michigan yellow perch fishery made it more difficult for some fishers to meet their minimum catch requirement.

Statutory authority:

Sections 29.085, 29.174 (3), 29.33 (1) and 227.11 (2) (a), Stats.

Staff time required:

The anticipated time commitment is 56 hours. Two hearings will be held in October, 1997: one in the Sturgeon Bay area and the other in the Milwaukee area.

Natural Resources

Subject:

Chapter NR 25 – Commercial fishing – outlying waters.

Description of policy issues:

Description of policy issues to be resolved, including groups likely to be impacted or interested in the issue:

To keep the incidental harvest of lake trout within acceptable limits, commercial gill netting for chubs is limited to prescribed areas. This rule will expand areas open to chub fishing during the winter season (January 15 through the end of February). The expansion of fishing areas during winter will allow more chubs to be harvested with less effort and less risk. The incidental harvest of lake trout will increase somewhat. The rule will limit some changes to two years, allowing further study of the biological implications of the changes, before permanent changes are adopted.

This rule will affect commercial fishers directly and sport fishers indirectly. It will be controversial.

The proposed rule change does not reflect a fundamental change in policy. It modifies current geographic limitations on where commercial fishing for chubs can take place during the winter fishing period (January 15 through the end of February).

Explain the facts that necessitate the proposed change:

The rule will expand commercial fishing opportunities. Changes to the northern chub fishing zone adopted by the NRB in 1996 limited chub fishing in the Northern Chub Fishing Zone and the closure of the Lake Michigan yellow perch fishery in 1996 sharply limited fishing opportunities for a number of commercial fishers.

Statutory authority:

Sections 29.085, 29.174 (3), 29.33 (1) and 227.11 (2) (a), Stats.

Staff time required:

The anticipated time commitment is 47 hours. Two open public meetings have been held to discuss these issues. Two hearings will be held in October, 1997: one in the Sturgeon Bay area and the other in the Milwaukee area.

Natural Resources

Subject:

NR Code – Fishing, hunting and trapping regulations.

Description of policy issues:

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

The Department is initiating the annual rule development cycle for the 1998 spring fish and wildlife hearings. We anticipate proposing changes to existing Wisconsin Administrative Code. These proposals will come before the Natural Resources Board in January, 1998 for approval to hold public hearings, to be held in conjunction with the Conservation Congress Spring meetings in April, 1998. The effective dates of these rules, if promulgated, will vary depending on the urgency and program timelines.

Statutory authority:

Section 29.174, Stats.

Staff time required:

The anticipated time commitment is 342 hours. Seventy-two hearings will be held in April, 1998 in every county.

Natural Resources

Subject:

Chapter NR 102 – To upgrade the classification of 5 waterbodies from Fish & Aquatic Life to Outstanding Resource Water status.

Description of policy issues:

Description of policy issues to be resolved, including groups likely to be impacted or interested in the issue:

There was significant public support to reclassify the Willow Flowage as well as several other flowages in northern Wisconsin as Outstanding Resource Waters (ORW) in the last round of nominations that went to the Natural Resources Board in October 1992. The same groups that were interested in the reclassification of these waters in 1992–93 are likely to be interested again. These groups include:

- Environmental and conservation organizations;
- The Tribes;
- The counties;
- Wisconsin Association of Manufacturers and Commerce; and
- Noranda Minerals.

This action does not represent a change from past policy.

Statutory authority:

Section 281.15, Stats.

Staff time required:

The anticipated time commitment is 280 hours. Two hearings will be held in October 1997 in Rhinelander and Superior.

Natural Resources**Subject:**

Chapter NR 108 – Modifications to review procedures for fast-track sewer extensions and “minor” industrial projects.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

Item #1. The Bureau of Watershed Management needs to modify or eliminate fast-track plan review of municipal sewer extension and lift station construction projects. The following issues need to be addressed as part of this effort:

- The current electronic tracking system used for all plan approvals (including the fast-track system) needs to be replaced to increase the usefulness and efficiency of the system.

- Municipal conformance with regulatory restrictions that are associated with the fast-track sewer extension and lift station review process (conformance with code requirements, assurance that the necessary permits and approvals are received from other Department or regional planning agencies, and minimization of environmental impacts) needs to be continued.

Item #2. The Bureau of Watershed Management will be evaluating whether plan review activities related to certain “minor” industrial projects can be modified or eliminated.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

Item #1. Staffing and budgetary constraints require that the Bureau of Watershed Management address workload associated with fast-track sewer extensions.

Item #2. Staffing constraints and workload priorities are necessitating that the Bureau of Watershed Management evaluate the need for continued review, as currently required by ch. NR 108, Wis. Adm. Code, of “minor” industrial projects.

Statutory authority:

Section 281.41, Stats.

Staff time required:

The anticipated time commitment is 313 hours. Two hearings will be held in August, 1998 in Madison and Wausau.

Revenue**Subject:**

Sections Tax 11.03 and 11.11 – Wisconsin sales and use tax treatment of:

1. Purchases made by public schools located outside Wisconsin and purchases by schools and school related organizations.

2. Utilities purchased for use in operating an industrial waste treatment facility.

3. Additional types of waste treatment facilities.

Description of policy issues:*Preliminary objectives:*

The objective of the rule order is to:

1. Correct s. Tax 11.03 to reflect a change in Department policy relating to the Wisconsin sales and use tax treatment of purchases made by public schools located outside Wisconsin.

2. Clarify that under s. Tax 11.03 (4) (c), related organizations of private or public schools which are subject to the control and supervision of school officials do not need to obtain a certificate of exempt status.

3. Correct s. Tax 11.11 to reflect a change in Department policy relating to the Wisconsin sales and use tax treatment of utilities purchased for use in operating an industrial waste treatment facility.

4. Provide additional information in s. Tax 11.11 with respect to Department policy relating to the Wisconsin sales and use tax treatment of other types of waste treatment facilities made known to the Department.

Description of existing or new policies:

This rule order reflects the Department of Revenue’s existing policy of providing accurate information to taxpayers, practitioners, and Department employees regarding sales and use taxes as they relate to elementary and secondary schools and industrial and municipal waste treatment facilities.

Policy alternatives:

- Do nothing.

Section Tax 11.03 will be incorrect in that it does not reflect changes in Department policy relating to the Wisconsin sales and use tax treatment of purchases made by public schools located outside Wisconsin.

Section Tax 11.11 will be incomplete and incorrect in that it does not reflect changes in Department policy relating to the Wisconsin sales and use tax treatment of utilities used in operating an industrial waste treatment facility and that all relevant information applicable to these types of facilities known to the Department is not included in the rule.

Statutory authority:

Section 227.11 (2) (a), Stats.

Staff time required:

The Department estimates it will take approximately 50 hours to develop this rule order. This includes drafting the rule order, review by appropriate parties, and preparing related documents. The Department will assign existing staff to develop this rule order.

University of Wisconsin System**Subject:**

Chapter UWS 18 – Relating to conduct on University of Wisconsin System lands.

Description of policy issues:*1) Objectives of the rules:*

Under s. 36.11 (1) (c), Stats., the Board of Regents of the University of Wisconsin System has promulgated rules governing conduct on university lands. These rules are enforced by university police officers in accordance with the citation procedure provided under s. 778.25, Stats. The proposed rules would amend existing provisions and create new provisions to address current campus law enforcement problems.

2) Policy analysis:

The last major revision to these rules was completed in 1991. Since that time, campus police officers have experienced new problems and have recommended that the rules be amended to deal with these situations. The changes would be consistent with modifications in certain state criminal statutes and municipal ordinances. New provisions under the rules would address specified fire safety issues, possession of drug paraphernalia, resisting or obstructing police officers, abuses of telephones, assaultive behavior, the operation of motor vehicles off roadways, misuse of parking permits, damage to computers and related equipment, abuse of computer communication equipment, deposit of human waste, curfew violations by minors, conduct at athletic events and theft of library materials. Inclusion of these new provisions in ch. UWS 18 would allow university police to invoke the citation procedure for enforcement purposes in a manner parallel to that used by municipalities to deal with ordinance violations for similar offenses.

3) Policy alternatives to the rules:

The principal alternative to the proposal is to make no changes in the rules. If no changes are made, the law enforcement problems listed above either would not be actionable at all, or would have to be addressed through state criminal proceedings. Use of the state criminal process to address these relatively minor offenses is problematic because it is a more complex process than the citation process, and because using it places additional burdens on other law

enforcement agencies and officials. Further, invoking the criminal process can lead to inequitable treatment of individuals charged with misconduct, since a person apprehended on university lands may be charged with a crime, while the same offense could be treated as an ordinance violation if it occurred in the neighboring municipality.

Statutory authority for the proposed rules:

Section 36.11 (1) (c), Stats.

State employee time required for development of the rules:

It is estimated that the amount of state employee time required to develop the rule will be at least 80 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Health & Family Services

Rule Submittal Date

Notice is hereby given that on July 11, 1997, the Department of Health and Family Services submitted ch. HFS 139 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

Sections 250.04 (7), 250.06 (1) and 251.06 (3) (e), Stats.

The subject matter of ch. HFS 139 relates to qualifications of public health professionals employed by local health departments.

Reason for rules, intended effects, requirements:

This is a revision of current rules dating from 1984 and amended in part in 1988, that establish qualifications for public health professionals employed by local health departments. The rules are being updated following the updating and renumbering of the public health statutes by 1993 Wis. Act 27 and on recommendation of state-local committees that, following up on the statute changes, recommended adoption of specified new public health rules and revision of some of the current public health rules.

The revised rules differ from the current rules in that qualifications for local health officers are now set out in statute, and so are simply referenced in the rules; sections on public health professionals "serving as health officers for the purpose of communicable disease control" or "who direct environmental health programs" are deleted because they are not rooted in statute; a section on public health sanitarian qualifications is added; and two provisions, one relating to public health nurses and the other to directors of public health nursing, have been deleted because they expired in December 1991.

Agency Procedure for Promulgation

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Person

Margaret Schmelzer
Division of Health
Telephone (608) 266-0877

Insurance, Commissioner of

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on July 15, 1997.

Analysis

These changes will affect ss. Ins 2.14 and 2.16, Wis. Adm. Code, relating to life insurance solicitation.

Agency Procedure for Promulgation

The date for the public hearing is September 5, 1997.

Contact Person

To obtain a copy of the proposed rule, contact:

Meg Gunderson
OCI Central Files
Telephone (608) 266-0110

For additional information, please contact Stephen Mueller at (608) 267-2833 or e-mail at smueller@mail.state.wi.us in the OCI Legal Unit.

N O T I C E S E C T I O N

Notice of Hearing

Commissioner of Insurance

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the revision of ss. Ins. 2.14 & 2.16, Wis. Adm. Code, relating to life insurance solicitation.

Hearing Information

September 5, 1997	Room 23
Friday	OCI, 121 East Wilson St.
10:00 a.m.	Madison, WI
or as soon thereafter as the matter may be reached	

Written Comments

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Stephen Mueller, OCI, PO Box 7873, Madison WI 53707.

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 600.01(2), 601.41(3), 601.42, 628.34(12)

Statutes interpreted: ss. 600.01, 628.34 (12)

Effective January 1, 1998 Wisconsin will adopt the National Association of Insurance Commissioners Life Illustrations Model Regulation as s. Ins. 2.17 Wis. Adm. Code. These changes are needed to adapt other rules pertaining to life illustrations to s. Ins. 2.17. These changes will be made by emergency rule to synchronize with s. Ins. 2.17.

- The main changes proposed to s. Ins. 2.14 include:
 - Eliminating the requirement that a policy summary be provided at delivery, if a basic illustration was provided at the time of sale.
 - Eliminating the requirement that cost indexes be shown on the policy summary.
 - Prohibiting insurers from illustrating anything except guaranteed policy elements, on the policy summary, and requiring that values be illustrated for years 1–20 and at least one year between age 60 and 65, or maturity, whichever is earlier.
 - Requiring that only guaranteed elements be used in the calculation of cost comparison indexes. As a result, the formulas for calculating the net payment cost index and the surrender cost index have been revised and any reference to the equivalent level annual dividend has been deleted from the rule.
 - Requiring that insurers use the most current version of the NAIC Life Insurance Buyer's Guide.
- The main changes proposed to s. Ins. 2.16 include:
 - Excluding a basic illustration from the definition of an advertisement.
 - Revising the purpose of the rule to indicate that the rule is in addition to, and not a substitute for s. Ins. 2.17.

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected:
 - Insurance agents
- b. Description of reporting and bookkeeping procedures required:
 - None beyond those currently required.
- c. Description of professional skills required:
 - None beyond those currently required.

Contact Person

A copy of the full text of the proposed rule and fiscal estimate may be obtained from Meg Gunderson, Services Section, Office of the Commissioner of Insurance, at (608) 266-0110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707-7873.

Notice of Hearings

Natural Resources (Environmental Protection— General, Chs. NR 100—)

Notice is hereby given that pursuant to ss. 227.11(2)(a), 281.15, 283.001 and ch. 289, Stats., interpreting ss. 281.12(1), 281.15, 283.001 and ch. 289, Stats., the Department of Natural Resources will hold public hearings on the amendment of s. NR 103.08(4)(b) and the creation of s. NR 103.08(4)(c), Wis. Adm. Code, relating to water quality standards for wetlands specific to the cranberry industry.

In August, 1996, the Department held public hearings on rules relating to water quality standards for wetlands, water quality certification and landfill location, performance and design criteria. The Department now proposes, by amending s. NR 103.08(4)(b), to evaluate the significance of wetland functions at the same time as practicable alternatives are considered for cranberry activities. This change allows the flexibility to balance the scope and detail of the alternative analysis with the quality of the affected wetland. The proposed revisions also address the extensive concerns and comments received on the original proposal about reversing the alternatives and functional analysis sequence, introducing language not defined or used in the current federal and state law, regulations or guidelines, switching the burden of proof from the project proponent to the Department and inconsistencies with federal language by simply specifically including cranberry activities into existing language, procedures and criteria. The change also recognizes the historical relationship of existing cranberry operations and wetlands by treating cranberry operations the same as wetland dependent activities.

The initial proposal limiting the scope of practicable alternative for expansion activities of existing cranberry operations to current property boundaries received significant public comment. The proposed s. NR 103.08(4) has been modified to deal only with the practicable alternatives analysis specific to cranberry operations. Changes were made both to define "expansion activities" and to make the covered activities consistent with those in the federal Clean Water Act Section 404 program. Language which addressed how the Department determines compliance with the chapter was removed. Language allowing the consideration of property adjacent to existing cranberry operations in the practicable alternatives was added consistent with language for the expansion of landfills.

Fiscal Estimate

There is no fiscal effect.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

August 11, 1997
Monday
at 11:00 a.m. AND 5:00 p.m. **Council Chambers, City Hall,
444 W. Grand Avenue
Wisconsin Rapids**

August 12, 1997
Tuesday
at 11:00 a.m. AND 5:00 p.m. **Room 4
DNR Northern Region Office
107 Sutliff Avenue
Rhinelander**

Use lower back entrance for easier access to Room 4.

August 14, 1997
Thursday
at 11:00 a.m. AND 5:00 p.m. **Room 027, GEF #2
101 South Webster Street
Madison**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Pat Trochlell at (608) 267-2453 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rule may be submitted to Ms. Pat Trochlell, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **August 22, 1997**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WZ-35-96] and fiscal estimate may be obtained from Ms. Trochlell.

Notice of Hearing

Workforce Development

(Labor Standards, Chs. DWD 270-279)

Notice is given that pursuant to ss. 103.005 (1) and 104.04, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the emergency rule revision of ch. DWD 272, Wis. Adm. Code, relating to minimum wage.

Hearing Information

The public hearing is scheduled as follows:

August 12, 1997
Tuesday
9:30 a.m. **Room 400X, GEF #1
201 East Washington Ave.
MADISON, WI**

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-7560 or Telecommunications Device for the Deaf (TDD) at (608) 264-8752 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Copies of Rules

A copy of the rules to be considered may be obtained by contacting the following address or phone number, or at the appointed time and place the hearing is held.

Division of Equal Rights
Telephone (608) 266-7560
Dept. of Workforce Development
201 East Washington Ave.
P.O. Box 8928
Madison, WI 53707

Written Comments

Interested people are invited to appear at the hearing, and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing may be submitted no later than **August 15, 1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Lynn Hendrickson at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 103.005 (1), 103.02 and 104.04

Statutes interpreted: ss. 103.02 and 104.04

This rule makes the following changes to Wisconsin's administrative rules relating to minimum wage rates:

► The rule defines an "opportunity employee" as an employee who is under 20 years of age and in his or her first 90 days of employment with each new employer. The minimum wage for an opportunity employee is \$4.25 per hour. This provision is similar to the provision on probationary employees in the federal Fair Labor Standards Act.

► The rule provides that an employer may not displace an employee solely for the purpose of hiring an employee to be paid the opportunity wage.

Initial Regulatory Flexibility Analysis

1. *Types of small businesses that will be affected by the rules:*

This proposed rule changes the minimum wage rates paid by any business with employees who receive the minimum wage, but it does not impose any new requirements upon employers.

2. *Reporting, bookkeeping and other procedures required for compliance with the rules:*

The proposed rule does not create any new reporting or bookkeeping procedures.

3. *Types of professional skills necessary for compliance with the rules:*

No professional or specialized skills are needed for compliance with the proposed rule.

Fiscal Estimate

Because this emergency rule affects only the continuation of the opportunity wage, it has no fiscal effect.

Notice of Hearing

Workforce Development

(Labor Standards, Chs. DWD 270-279)

Notice is given that pursuant to ss. 103.005 (1), 103.02 and 104.04, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the creation of s. DWD 272.14, Wis. Adm. Code, relating to minimum wage—displacement.

Hearing Information

The public hearing is scheduled as follows:

August 12, 1997
Tuesday
9:30 a.m.

Room 400X, GEF #1
201 East Washington Ave.
MADISON, WI

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-7560 or Telecommunications Device for the Deaf (TDD) at (608) 264-8752 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Copies of Rules

A copy of the rules to be considered may be obtained by contacting the following address or phone number, or at the appointed time and place the hearing is held.

Division of Equal Rights
Telephone (608) 266-7560
Dept. of Workforce Development
201 East Washington Ave.
P.O. Box 8928
Madison, WI 53707

Written Comments

Interested people are invited to appear at the hearing, and will be afforded the opportunity of making an oral presentation of their positions. People making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing may be submitted no later than **August 15, 1997**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Lynn Hendrickson at the address noted above.

Written comments will be given the same consideration as testimony presented at the hearing. People submitting comments will not receive individual responses.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 103.005 (1), 103.02 and 104.04

Statutes interpreted: ss. 103.02 and 104.04

This rule adds a provision to the rules relating to the minimum wage to provide that an employer may not displace an employee solely for the purpose of hiring an employee to be paid the opportunity wage. (The opportunity wage rate, \$4.25 per hour, may be paid to an employee who is under 20 years of age and in his or her first 90 days of employment with each new employer.)

Text of Rule

SECTION 1. DWD 272.14 is created to read:

DWD 272.14 Prohibition of displacement. An employer may not displace an employee solely for the purpose of hiring an employee to be paid the opportunity wage.

Fiscal Estimate

This change in language on displacement will have no fiscal effect.

Initial Regulatory Flexibility Analysis

1. *Types of small businesses that will be affected by the rules:*

All types of small businesses except agriculture.

2. *Reporting, bookkeeping and other procedures required for compliance with the rules:*

The proposed rule does not create any new reporting or bookkeeping procedures.

3. *Types of professional skills necessary for compliance with the rules:*

No professional or specialized skills are needed for compliance with the proposed rule.

***NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF
EACH HOUSE OF THE LEGISLATURE, UNDER S. 227.19, STATS.***

Please check the Bulletin of Proceedings for further information on a particular rule.

Financial Institutions—Credit Unions (CR 97–49):

Ch. CU 54 – Relating to real estate mortgage loans in credit unions.

Financial Institutions—Credit Unions (CR 97–50):

Ch. CU 55 – Relating to check cashing, money orders and travelers checks.

Financial Institutions—Credit Unions (CR 97–51):

Ch. DFI–CU 57 (CU 57) – Relating to retention of credit union books and records.

Financial Institutions—Credit Unions (CR 97–52):

Ch. CU 70 – Relating to participation loan authority parity with federal credit unions.

Financial Institutions—Savings Banks (CR 97–28):

S. DFI–SB 3.08 (2) (i) – Relating to the definition of “primary liquid assets” in the liquidity rule for savings banks.

Insurance, Commissioner of (CR 97–76):

S. Ins 18.07 (5) (bg) – Relating to HIRSP (health insurance risk-sharing plan) rate increase for fiscal year 1997–1998.

Revenue (CR 97–55):

Ch. Tax 11 – Relating to registering for and reporting Wisconsin sales and use taxes.

Transportation (CR 97–64):

Ch. Trans 305 – Relating to standards for vehicle equipment.

Workforce Development (CR 97–54):

Ch. DWD 12 and ss. DWD 15.03 and 56.04 – Relating to the Wisconsin Works (W–2) program.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Health & Family Services (CR 97-24):

An order repealing ch. HSS 148, relating to rural counties participating in the Wisconsin breast cancer screening project.

Effective 09-01-97.

Health & Family Services (CR 97-36):

An order affecting ss. HSS 1.01, 1.02, 1.03, 1.05 and 1.07, relating to operation of the uniform fee system, including determination of parental liability for the cost of court-ordered substitute care of a child.

Effective 09-01-97.

Insurance, Commissioner of (CR 97-7):

An order affecting s. Ins 3.46, relating to the requirements for tax deductible long-term care insurance.

Effective 09-01-97.

Natural Resources (CR 96-178):

An order affecting ss. NR 502.06 & 506.105 and chs. NR 503, 504, 512, 514, 516 and 520, relating to solid waste management.

Part effective 09-01-97.

Part effective 10-01-97.

Natural Resources (CR 96-187):

An order repealing s. NR 728.11 (4), relating to the sunset of s. NR 728.11.

Effective 09-01-97.

Natural Resources (CR 97-3):

An order affecting ss. NR 400.03, 406.04, 439.07 and 460 Appendix N and chs. NR 407 and 463, relating to federal emission standards for chromium electroplating and chromium anodizing operations.

Effective 10-01-97.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **July 31, 1997 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266-3358.

Corrections (CR 96-105):

An order affecting ch. DOC 325, relating to the temporary release under supervision of an inmate.
Effective 08-01-97.

Employee Trust Funds (CR 96-127):

An order creating ss. ETF 10.03 (3t) and 20.12, relating to conditions under which the Department of Employee Trust Funds will treat payments received under a court order or compromise settlement as earnings for retirement benefit purposes.
Effective 08-01-97.

Health and Family Services (CR 97-2):

An order creating ch. HFS 125, relating to do-not-resuscitate bracelets to alert emergency health care personnel of do-not-resuscitate orders.
Effective 08-01-97.

Health and Family Services (CR 97-8):

An order affecting ch. HSS 70, relating to loans to help pay for group housing for persons recovering from alcohol or other drug abuse.
Effective 08-01-97.

Hearing & Speech Examining Board (CR 96-162):

An order affecting ss. HAS 4.03, 5.02, 6.02, 6.065 and 6.09, relating to calibration of audiometric equipment and the use of support personnel.
Effective 08-01-97.

Hearing & Speech Examining Board (CR 96-173):

An order amending s. HAS 6.09 (2) (o), relating to the grounds for discipline for individuals who are credentialed as speech-language pathologists and audiologists.
Effective 08-01-97.

Insurance, Commissioner of (CR 96-182):

An order creating ch. Ins 23, relating to minimum standards for life insurance policies sold to fund prearranged funeral plans.
Effective 08-01-97.

Justice (CR 96-38):

An order creating ch. Jus 9, relating to the deoxyribonucleic acid (DNA) databank.
Effective 08-01-97.

Natural Resources (CR 96-40):

An order creating s. NR 19.025, relating to the waiver of approvals, fees and other requirements of ch. 29, Stats., for an educational, recreational skills activity.
Effective 08-01-97.

Natural Resources (CR 96-135):

An order amending s. NR 27.03 (2) and (3), relating to endangered and threatened species.
Effective 08-01-97.

Natural Resources (CR 96-159):

An order affecting ss. NR 10.01, 10.26 and 11.08, relating to sharp-tailed grouse hunting.
Part effective 08-01-97.

Natural Resources (CR 96-190):

An order affecting ss. NR 20.02, 20.03 and 25.06, relating to sport and commercial fishing for yellow perch in Green Bay.
Part effective 08-01-97.

Public Defender (CR 97-31):

An order affecting ss. PD 1.035, 1.05 and 1.06, relating to the certification of private bar attorneys.
Effective 08-01-97.

Public Defender (CR 97-32):

An order affecting s. PD 2.06, relating to the assignment of trial division cases to the private bar.
Effective 08-01-97.

Regulation and Licensing (CR 96-193):

An order affecting ch. RL 50 and ss. RL 52.02, 52.04, 53.02, 54.04 and 54.05, relating to the regulation of cemetery authorities, cemetery salespeople and preneed sellers of cemetery merchandise.
Effective 08-01-97.

Regulation and Licensing (CR 97-1):

An order affecting ss. RL 25.02, 25.025, 25.03, 25.035 and 25.066, relating to educational requirements for real estate salesperson's and broker's licenses.
Effective 08-01-97.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Department of Corrections (CR 96–105)

Ch. DOC 325 – Temporary release of an inmate under supervision.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1), Stats.

Summary of Comments:

No comments were reported.

2. Employee Trust Funds (CR 96–127)

SS. ETF 10.03 (3t) & 20.12 – The conditions under which the Department of Employee Trust Funds will treat payments received under a court order or compromise settlement as earnings for retirement benefit purposes.

Summary of Final Regulatory Flexibility Analysis:

The Department of Employee Trust Funds has determined that this rule will not have a significant economic impact on a substantial number of small businesses. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

3. Health & Family Services (CR 97–2)

Ch. HFS 125 – The do–not–resuscitate bracelets to alert emergency health care personnel of do–not–resuscitate orders.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will not have a significant economic impact on a substantial number of small businesses as defined in s. 227.114 (1) (a), Stats. Although there are some 450 ambulance service companies in the state, only about 25 are small businesses by that definition, and none of the affected hospitals are small businesses. The rules are limited to prescribing a uniform standard for do–not–resuscitate bracelets and minimal procedures for health care personnel to follow when they find that a patient is wearing a bracelet that meets the specifications.

Summary of Comments:

No comments were reported.

4. Health & Family Services (CR 97–8)

Ch. HSS 70 – Loans to help establish group homes for recovering substance abusers.

Summary of Final Regulatory Flexibility Analysis:

The rules will not affect small businesses as “small business” is defined in s. 227.114 (1) (a), Stats. Only non–profit organizations may apply for the loans that are made available under the rules.

Summary of Comments:

No comments were reported.

5. Hearing & Speech Examining Board (CR 96–162)

Chs. HAS 4, 5 & 6 – Calibration of audiometric equipment and the use of support personnel.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

6. Hearing and Speech Examining Board (CR 96–173)

S. HAS 6.09 (2) (o) – The grounds for discipline for individuals who are credentialed as speech–language pathologists and audiologists.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

7. Insurance (CR 96–182)

Ch. Ins 23 – Life insurance sold to fund prearranged funeral plans.

Summary of Final Regulatory Flexibility Analysis:

The rule does not impose any additional reporting requirements and does not require any additional measure or investments by small businesses. No methods are specified under s. 227.114 (2), Stats., because the rule does not impose any significant increase in costs, measure or reporting requirements different from those otherwise applicable.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

8. Justice (CR 96–38)

Ch. Jus 9 – The DNA data bank.

Summary of Final Regulatory Flexibility Analysis:

This rule will not affect small businesses as defined in s. 227.114, Stats., except in an entirely minimal and indirect manner.

Summary of Comments:

No comments were reported.

9. Natural Resources (CR 96–40)

S. NR 19.025 – Waiver of approvals, fees and other requirements of ch. 29, Stats., for an educational, recreational skills activity.

Summary of Final Regulatory Flexibility Analysis:

The rule does not regulate businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Environmental Resources Committee. On April 2, 1997, the Assembly Natural Resources Committee held a public hearing. No modifications to the rule were requested.

10. Natural Resources (CR 96–135)

S. NR 27.03 (2) & (3) – Endangered and threatened species.

Summary of Final Regulatory Flexibility Analysis:

The rule does not regulate small businesses, except if an individual collects certain species of butterflies or snakes to sell to collectors. Permits would be granted only to persons collecting them for scientific or educational purposes.

Summary of Comments:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Environmental Resources Committee. On April 2, 1997, the Assembly Natural Resources Committee held a public hearing. No modifications to the rule were requested.

11. Public Defender (CR 97–31)

Ch. PD 1 – Certification of private bar attorneys.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

12. Public Defender (CR 97–32)

S. PD 2.06 – The assignment of trial division cases to the private bar.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

13. Regulation & Licensing (CR 96–193)

Chs. RL 50, 52 & 54 – The regulation of cemetery authorities, cemetery salespersons and preneed sellers of cemetery merchandise.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

Summary of Comments:

No comments were reported.

14. Regulation & Licensing (CR 97–1)

Ch. RL 25 – The educational requirements for real estate salesperson's and broker's licenses.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

EXECUTIVE ORDERS

The following is a listing of recent Executive Orders issued by the Governor.

Executive Order 313. Relating to a Proclamation of a State of Emergency.

Executive Order 315. Relating to a Proclamation Calling to Active Duty Elements of the Wisconsin National Guard.

PUBLIC NOTICE

Public Notice

Notice of Environmental Assessment

Department of Commerce (Elevators and Mechanical Lifting Devices)

Notice is hereby given that the Department of Commerce has prepared a preliminary environmental assessment (EA) on the proposed chapters Comm 18 and 82 and chapters ILHR 50, 51 and 55, relating to elevators and mechanical lifting devices. The preliminary recommendation is a finding of no significant impact.

Copies of Preliminary EA and Contact Person

Copies of the preliminary environmental assessment (EA) are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Diane Meredith
Safety & Buildings Division
Telephone (608) 266-8982
(TTY) (608) 264-8777
Department of Commerce
P.O. Box 7969
MADISON, WI 53707

NOTE: Notice of public hearings was printed in the July 15, 1997 *Wisconsin Administrative Register*, on page 19.

Written Comments

Written comments will be accepted until **August 29, 1997**.

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